

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANITA MIRALLE, et al.,

Plaintiffs,

v.

THE CITY OF OAKLAND, et al.,

Defendants.

Case No. [18-cv-06823-HSG](#)

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

Re: Dkt. No. 2

A temporary restraining order is an “extraordinary remedy” that the court should award only upon a clear showing that the party is entitled to such relief. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Such an order may be issued only where the moving party has established: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to plaintiff in the absence of preliminary relief; (3) the balance of equities tips in plaintiff’s favor; and (4) that an injunction is in the public interest. *See id.* at 22.

This Court may issue a temporary restraining order without written or oral notice only if (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons it should not be required. Fed. R. Civ. P. 65(b)(1).

In this case, on the afternoon of November 9, 2018, pro se Plaintiffs filed a complaint, motion for temporary restraining order and motion for preliminary injunction. Dkt. Nos. 1, 2 and 3. Plaintiffs allege that they are homeless residents of a parcel known as “The Housing and Dignity Village,” located in Oakland on Elmhurst between 606 Clara Street and 9418 Edes Avenue. Dkt. No. 3 at 3. Plaintiffs allege that on November 7, 2018, they received a “Notice to

1 Vacate Illegal Encampment” indicating that the site will be cleared and closed on Saturday,
2 November 10 sometime between 8 a.m. and 4 p.m. *Id.* at Exhibit A.

3 It is not clear to the Court why Plaintiffs waited until little before 12 hours before the
4 potential clearing to file this action, when they received the notice several days ago. Nevertheless,
5 the Court finds that Plaintiffs have clearly shown that immediate and irreparable injury –
6 specifically the removal of plaintiffs and their belongings from the place they are now living – will
7 occur before the Defendants can be heard in opposition. Based on the timing of the noticed action,
8 by the time the papers could be served and a hearing held, Plaintiffs’ claims would essentially be
9 moot. The next business day that the Court can hold a hearing is Tuesday, November 13, because
10 November 12 is a federal holiday.

11 In addition, because the Plaintiffs are pro se, it is not clear whether the requirements of
12 Rule 65(b)(1)(B), which impose a duty on “the movant’s attorney,” are applicable here. Given the
13 imminent nature of the challenged action and resulting irreparable harm shown, the Court finds
14 that the requirements of Rule 65(b)(1) are met.

15 Accordingly, the Court **GRANTS** Plaintiffs’ motion for a temporary restraining order,
16 solely to maintain the status quo until the earliest possible hearing on the merits of the TRO
17 request. Defendants are enjoined from proceeding with the clearing and closing of 606 Clara
18 St/9418 Edes Ave pursuant to the November 7, 2018 Notice to Vacate until a hearing can be held
19 on the merits of Plaintiffs’ request. This order issued on November 9, 2018 at 5:40 p.m.

20 The Clerk is **DIRECTED** to serve this Order on the Plaintiffs by email at
21 maowunyo@gmail.com. The Clerk is further **DIRECTED** to serve this Order, the Complaint
22 (Dkt. No. 1), and the Motions for a Temporary Restraining Order (Dkt. No. 2) and Preliminary
23 Injunction (Dkt. No. 3) on Defendants Libby Schaaf at LSchaaf@oaklandnet.com and Joe
24 DeVries at jdevries@oaknet.com. Plaintiffs are responsible for serving the Complaint (Dkt. No.
25 1) and the Motions for a Temporary Restraining Order (Dkt. No. 2) and Preliminary Injunction
26 (Dkt. No. 3) on Defendant City of Oakland.


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A hearing on Plaintiffs’ motion for a temporary restraining order is set for Tuesday,
November 13 at 2:00 p.m. in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA. All parties
shall attend.

IT IS SO ORDERED.

Dated: November 9, 2018


HAYWOOD S. GILLIAM, JR.
United States District Judge